

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER 00-0029 ST
SALES AND USE TAX
For Tax Periods: 1995 Through 1997**

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Issues

1. Sales and Use Tax: Consumed in Production Exemption

Authority: IC6-2.5-3-2. IC 6-2.5-5-5.1(b), 45 IAC 2.2-5-12.

The taxpayer protests the imposition of use tax on liquid nitrogen.

2. Tax Administration: Penalty

Authority: IC 6-8.1-10-2(a).

The taxpayer protests the imposition of the penalty.

Statement of Facts

The taxpayer is in the business of manufacturing sulfuric acid. The petroleum refining process generates a waste known as spent sulfuric acid. The taxpayer purchases this spent sulfuric acid to use as a raw material in its manufacturing process. Throughout the production process, the liquid nitrogen is used to stabilize the gasses emitted from the spent sulfuric acid by creating an inert or non-combustible atmosphere within the closed-vent system. It also prevents the formation of gasses containing volatile organic compounds by exerting pressure on the elements of the manufacturing process.

The taxpayer claimed a refund of taxes paid on the liquid nitrogen in 1995. The Indiana Department of Revenue (department) audited the taxpayer for the years 1995-1997 and assessed additional tax. The taxpayer protested the taxes assessed on the liquid nitrogen and the denial of the claim for refund. A hearing was held. Further facts will be provided as necessary.

1. Sales and Use Tax: Consumed in Production Exemption

Discussion

Indiana imposes a use tax “on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction. . .” IC 6-2.5-3-2. The taxpayer contends that its use of liquid nitrogen qualifies for exemption pursuant to the provisions of IC 6-2.5-5-5.1(b) as follows:

Transactions involving tangible personal property are exempt from the state gross retail tax if the person acquiring the property acquires it for direct consumption as a material to be consumed in the direct production of other tangible personal property in the person’s business of manufacturing . . .

The liquid nitrogen is tangible personal property that is used in the production of the taxpayer’s product, sulfuric acid. The issue to be determined is whether or not the liquid nitrogen is actually consumed in the process of manufacturing of sulfuric acid.

The term “consumed” is defined for the purposes of this exemption at 45 IAC 2.2-5-12 as “the dissipation or expenditure by combustion, use, or application.” The taxpayer produced evidence that the liquid nitrogen is dissipated during the production process. It does not become part of the sulfuric acid and it is not present at the end of the sulfuric acid production process. Since the liquid nitrogen is consumed in the production process, it qualifies for exemption from the use tax.

Finding

The taxpayer’s protest is sustained.

2. Tax Administration: Penalty

Taxpayer also protests the imposition of the negligence penalty pursuant to IC 6-8.1-10-2 (a).

If a person fails to . . . pay the full amount of tax shown on his return on or before the due date for the return or payment, incurs, upon examination by the department, a deficiency which is due to negligence, . . . the person is subject to a penalty.

The department had previously audited the taxpayer. Even so, the taxpayer did not pay sales tax or self assess use tax on such previously identified taxable items as kitchen sink parts, shipping supplies, janitorial supplies, and asphalt patching material. This breach of the taxpayer’s duty to pay the proper amount of tax constitutes negligence.

Finding

Taxpayer’s protest to the assessment of the negligence penalty is denied.